

PETER HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
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Attorney for the New Jersey  
Board of Medical Examiners

FILED

Mar 7, 2003

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

ERVIN LEPKO, M.D.

TO PRACTICE MEDICINE AND SURGERY  
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER  
OF DISCIPLINE

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent, Ervin Lepko, M.D., License # MA 24494, is a physician licensed in the State of New Jersey. Respondent's license has lapsed and has not been renewed. As a consequence of Respondent's failure to submit his biennial renewal, Respondent's license to practice medicine in the State of New Jersey was automatically suspended pursuant to N.J.S.A. 45:9-6.1, which allows

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for reinstatement upon payment of certain fees. Respondent is also licensed to practice medicine in the State of New York.

2. On December 7, 2000, an Indictment was filed against Respondent in the United States District Court of New Jersey charging Respondent with twelve (12) counts of health care fraud. Specifically, Respondent was charged with knowingly and willfully devising a scheme and artifice to defraud Medicare and private insurance companies from approximately September 1996 to January 1998. The Indictment sets forth that the object of Respondent's alleged scheme was to obtain payments from Medicare and private insurance companies by fraudulently billing Medicare and private insurance companies for medical services that Respondent did not provide in the manner and to the extent he claimed. These allegations stem from insurance claims made by Respondent for anesthesia services provided at Lenox Hill Hospital in New York, in which he falsely stated the amount of time he spent performing such services, in that Respondent actually spent less time than stated in the relevant insurance claims.

3. On April 20, 2001, a Plea Agreement was entered into by Respondent whereby Respondent pled guilty to one count of health care fraud by submitting false claims for medical services to Medicare and private insurance companies in violation of 18 U.S.C. § 1347.

### CONCLUSIONS OF LAW

1. The above guilty plea provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey Pursuant to N.J.S.A. 45: 1-21(f) in that Respondent has been convicted of, or engaged in acts constituting a crime or offense involving moral turpitude or relating adversely to the activity regulated by the board.

2. The above guilty plea provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(e) in that Respondent's guilty plea conclusively establishes that Respondent has engaged in professional or occupational misconduct as may be determined by the board.

3. The above actions provide grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(h) in that Respondent has failed to comply with the requirements to renew his license pursuant to N.J.S.A. 45:9-6.1.

### DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending Respondent's license to practice medicine and surgery in the State of New Jersey was entered on April 8, 2002 and a copy was forwarded to Respondent's last known address of record located at 18 Jane Drive, Englewood Cliffs, NJ 07632 by means of both regular and certified mail.

The green return-receipt card #7000-1530-0002-0918-2349 was returned signed and the envelope sent by regular mail was not returned to the Post Office as undeliverable. Further, a copy of the Provisional Order of Discipline was also forwarded to Gerald L. Shargel, Esq., Respondent's counsel regarding the plea agreement discussed above, by means of both regular and certified mail. The green return-receipt card #7000-1530-0002-0918-2332 was returned signed and the envelope sent by regular mail was not returned to the Post Office as undeliverable. Therefore, the Board deems that service was effective. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

Although the record reflects that the Provisional Order was served upon Respondent, no response has been received to date. (See attached). Accordingly the Board considered the matter, determined that further proceedings were not necessary and the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 7th day of Mar 2003, ORDERED that:

1. Respondent's New Jersey license is actively suspended for one (1) year beginning on the date of service of this Order.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice, and any practice in this State prior to said appearance shall constitute grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: William V. Harrer MD BLD  
William V. Harrer, M.D., B.L.D.  
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

**general** circulation in the geographic vicinity **in which the practice was** conducted. **At the end of the three** month period, **the licensee shall file with the Board** the name and telephone **number of** the contact person who **will have** access to medical **records** of former patients. **Any change in that** individual or **his/her** telephone number **shall be promptly reported to the** Board. When a patient or **his/her** representative requests a copy of his/her medical **record** or **asks that record be forwarded** to **another** health **care** provider, the licensee **shall promptly provide the** record **without** charge to the patient.

## **5. Probation/Monitoring Conditions**

**With respect to** any licensee who **is the** subject **of any** Order **imposing a** probation or monitoring requirement or a **stay** of an active suspension, **in whole or in part, which is** conditioned upon compliance with a probation **or** monitoring requirement, the **licensee** shall fully cooperate with the Board and its **designated representatives**, including the Enforcement Bureau of the Division of **Consumer** Affairs, in ongoing monitoring of the **licensee's status** and practice. Such monitoring shall **be** at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but **is** not limited to, inspection of the **professional premises** and equipment, **and** inspection **and** copying of patient records (confidentiality of patient identity shall **be** protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, **but is not limited to**, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility **involved in the** education, treatment, monitoring or oversight of the practitioner, or maintained **by** a rehabilitation program for impaired practitioners. If bodily substance monitoring has been **ordered**, the practitioner shall fully cooperate **by** responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.



## ADDENDUM

**Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:**

**Social Security Number':**\_\_\_\_\_

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

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List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

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Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

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<sup>1</sup> Pursuant to 45 CFR-Subtitle A Section 67.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.

**EXHIBIT A**

DEC 7 2000

BAL/98R00071

AT 8:30                      M  
WILLIAM T. WALSH  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Hen.

v.

:

Criminal No. 00-791 (HAA)

ERVIN E. LEPKO

Title 18, United States Code,  
Sections 1347 and 2

**INDICTMENT**

The **grand jury** in and for the District of New Jersey, sitting **in** Newark, charges:

**COUNTS 1 - 12**  
**(Health Care Fraud)**

**The Defendant and his Practice**

1. At all times relevant to this Indictment, defendant **ERVIN E. LEPKO** was a medical doctor authorized to practice in the **State** of New **York** where he practiced in the **field** of anesthesiology. **LEPKO** performed anesthesia services at Lenox Hill Hospital in New York, New **York** and maintained an office at 18 Jane Drive, Englewood Cliffs, New Jersey.

**The Victim Health Care Benefit Programs**

2. At all times relevant to this Indictment, many of the patients seen by defendant **ERVIN E. LEPKO** were insured by health care benefit **programs**, including Medicare and private insurance companies.

3. At all times relevant to this Indictment:

(a) The **Social Security Act** (Title **42**, United States Code, Section 1395, et seq.) was in full force and effect, and had established the Medicare-Part B Program (the "Medicare Program" or "Medicare") which provided for supplementary medical insurance benefits for

Certified as a true copy on  
This Date: 9-12-01  
By M. Dwyer  
( ) Clerk  
( 4 ) Deputy

individuals aged 65 years and older who were entitled to Social Security benefits. Individuals receiving these benefits were commonly referred to as “beneficiaries;”

(b) The Department of Health and Human Services (“HHS”) was an agency of the United States and was responsible for the funding, administration and supervision of the Medicare Program. The Health Care Financing Administration (“HCFA”) was a division of HHS and was directly responsible for the administration of the Medicare Program. HCFA, in discharging those responsibilities, contracted with private insurance companies, known as carriers, to receive, review, and pay appropriate claims for reimbursement for the provision of services to Medicare Program beneficiaries. The carrier responsible for processing claims in the region that included the State of New York, where defendant ERVIN E. LEPKO practiced, was Empire Medicare Services (“Empire”), located in Yorktown Heights, New York;

(c) LEPKO was an approved provider under the Social Security Act. As an approved provider, LEPKO was authorized to submit claims for reimbursement directly to carriers under contract with HCFA, including Empire; and

(d) Medicare used a “fee schedule” to determine the amount it paid for any given procedure. Generally, Medicare paid the physician 80% of the fee schedule amount. The patient was responsible for paying the remaining 20%, also known as the “co-payment.”

4. Oxford Health Plans was a health care benefit program with headquarters in Norwalk, Connecticut that made payments for medical benefits, items and services provided to its beneficiaries.

5. Horizon BlueCross BlueShield of New Jersey was a health care benefit program with headquarters in New Jersey that made payments for medical benefits, items and services

provided to its beneficiaries.

6. GHI was a health care benefit plan with headquarters in New York, New York, that made payments for medical benefits, items and services provided to its beneficiaries.

### **Billing Procedures**

7. The claims submitted to health care benefit programs, including Medicare and private insurance companies, by defendant ERVIN E. LEPKO purported to set forth the date on which services were rendered, the type of services rendered on each date, the diagnosis, and the charges for the services.

8. Health care providers that submitted claims to health care benefit programs, including Medicare and private insurance companies, indicated the type of services provided by using five-digit codes listed in the Physicians' Current Procedural Terminology ("CPT") a publication of the American Medical Association. The CPT designates a particular code number to describe a particular surgical or clinical procedure.

9. At all times relevant to this Indictment, health care benefit programs, including Medicare and private insurance companies, based their reimbursement for anesthesia services on several factors, including whether the anesthesia was personally performed by the anesthesiologist and the particular underlying operative procedure being performed on the beneficiary. Each anesthesia procedure code had "base" units assigned to it, which were established according to the complexity of the procedure. Base units dictated part of the reimbursement to providers for anesthesia services rendered. In addition to base units, reimbursement for anesthesia services was significantly affected by the time devoted to the anesthesia service or "time units." One time unit was equal to fifteen minutes of anesthesia

service. The actual time devoted by the rendering anesthesiologist was recorded on the billing form or electronic submission and was used by health care benefit programs, including Medicare and private insurance companies, in determining the actual reimbursement for a given procedure. For purposes of billing and reimbursement, anesthesia time started when the physician or anesthesiologist began to prepare the patient for anesthesia care in the operating room or equivalent area and ended when the anesthesiologist was no longer in personal attendance, i.e., when the patient could be safely placed under post-operative supervision. The actual number of minutes of anesthesia service rendered during the particular anesthesia procedure was reported by the anesthesia provider to health care benefit programs, including Medicare and private insurance companies.

10. Physicians obtained reimbursement from health care benefit programs, including Medicare and private insurance companies, by transmitting, either electronically or by mail, the pertinent billing information, including the CPT code number and the amount of time of anesthesia service rendered.

11. Health care benefit programs, including Medicare and private insurance companies, authorized payment for services only if such services were actually performed and only if such services were reasonable and necessary for the treatment of any illness or injury of a beneficiary.

### **Scheme to Defraud**

12. **Beginning at least as early as September 1996 and continuing through in or about January 1998, in the District of New Jersey, and elsewhere, defendant ERVIN E. LEPKO knowingly and wilfully devised, and intended to devise, a scheme and artifice to defraud health care benefit programs, namely Medicare and private insurance companies, and for obtaining, by means of false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, health care benefit programs in connection with the delivery of, and payment for, health care benefits, items and services, which scheme and artifice to defraud is described in substance in paragraphs 13 through 16 below**

### **The Object of the Scheme to Defraud**

13. The object of **the scheme and artifice to defraud was** to obtain payments from Medicare **and** private insurance companies by fraudulently billing Medicare and **private insurance companies** for services that defendant **ERVIN E. LEPKO** did not **provide** in the manner and to the extent he claimed.

### **Means and Methods of the Scheme to Defraud**

14. It **was part** of the scheme and artifice to defraud health care benefit programs, including Medicare and private insurance companies, that defendant **ERVIN E. LEPKO** caused to be submitted to Medicare **and** insurance companies fraudulent claims for **services** that were not performed in the manner and to the extent he claimed.

15. It was a further part of the scheme and artifice to defraud health care benefit programs, including Medicare and private insurance companies, that defendant **ERVIN E. LEPKO** submitted claims for anesthesia services in which he falsely stated the amount of time



he spent performing such services when, as LEPKO there and then well knew, he actually spent significantly less time performing such services.

16. It was a further part of the scheme and artifice to defraud Medicare and private insurance companies that defendant **ERVIN E. LEPKO** deposited the proceeds of the fraud in a bank account he controlled at Summit Bank in Ridgefield Park, New Jersey.

17. On or about the dates set forth below, in Newark, in the District of New Jersey and elsewhere, the defendant,

**ERVIN E. LEPKO**

for the purpose of executing the aforementioned scheme and artifice and attempting to do so, did obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by and under the care custody and control of health care benefit programs, in that he submitted false claims to health care benefit programs for payment of medical services that were not provided in the manner and to the extent he claimed, as follows:

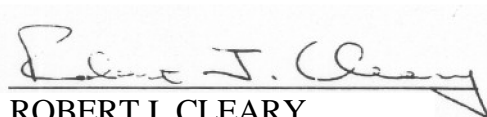
| Count | Date of Claim | Victim Health Care Benefit Program & Reimbursement Check Issued in Furtherance of the Scheme | Reference   |
|-------|---------------|--|---|
| 1     | 11/8/96       | GHI check number 9677236 dated 12/21/96 in the amount of \$1,000.                            | Patient: SG<br>Date of Service: 10/31/96<br>Billed Time: 290 minutes<br>Actual Time: 40 minutes |
| 2     | 1/6/97        | Horizon BlueCross BlueShield check number 88548537 dated 1/14/97 in the amount of \$760.     | Patient: RA<br>Date of Service: 12/19/96<br>Billed Time: 230 minutes<br>Actual Time: 55 minutes |
| 3     | 1/26/97       | Oxford Health Plans check number 787485 dated 2/17/97 in the amount of \$876.40.             | Patient: MA<br>Date of Service: 1/23/97<br>Billed Time: 290 minutes<br>Actual Time: 55 minutes  |

| Count | Date of Claim | Victim Health Care Benefit Program & Reimbursement Check Issued in Furtherance of the Scheme             | Reference  |
|-------|---------------|--|--|
| 4     | 1/26/97       | Oxford Health Plan check number <b>787485</b> dated 2/17/97 in the amount of <b>\$876.40.</b>            | Patient: <b>AE</b><br>Date of Service: 1/23/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>45</b> minutes  |
| 5     | 2/9/97        | Oxford Health Plans check number <b>200216</b> dated 3/10/97 in the amount of <b>\$1,177.65</b>          | Patient: <b>HH</b><br>Date of Service: 2/4/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>65</b> minutes   |
| 6     | 2/9/97        | Oxford Health Plans check number <b>200216</b> dated 3/10/97 in the amount of <b>\$1,177.65.</b>         | Patient: <b>LL</b><br>Date of Service: 2/6/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>55</b> minutes   |
| 7     | 2/9/97        | Empire Medicare Services check number <b>90285092</b> dated 3/17/97 in the amount of <b>\$1,999.14.</b>  | Patient: <b>AB</b><br>Date of Service: 2/5/97<br>Billed Time: <b>230</b> minutes<br>Actual Time: <b>50</b> minutes   |
| 8     | 2/22/97       | Empire Medicare Services check number <b>90344529</b> dated 03/21/97 in the amount of <b>\$3,008.10.</b> | Patient: <b>PM</b><br>Date of Service: 2/20/97<br>Billed Time: <b>470</b> minutes<br>Actual Time: <b>150</b> minutes |
| 9     | 3/20/97       | Oxford Health Plans check number <b>9489805</b> dated 12/11/97 in the amount of <b>\$469.56.</b>         | Patient: <b>AE</b><br>Date of Service: 3/20/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>55</b> minutes  |
| 10    | 4/7/97        | Empire Medicare Services check number <b>90533164</b> dated 5/5/97 in the amount of <b>\$1,624.99.</b>   | Patient: <b>LR</b><br>Date of Service: 4/4/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>50</b> minutes   |
| 11    | 4/13/97       | Oxford Health Plan check number <b>7845756</b> dated 6/22/93 in the amount of <b>\$2,771.68.</b>         | Patient: <b>GM</b><br>Date of Service: 4/10/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>50</b> minutes  |
| 12    | undated       | Empire Medicare Services Check number <b>90660524</b> dated 6/9/97 in the amount of <b>\$2,506.61</b>    | Patient: <b>AC</b><br>Date of Service: 5/17/97<br>Billed Time: <b>290</b> minutes<br>Actual Time: <b>90</b> minutes  |

All in violation of Title 18, United States Code, Sections 1347 and 2.

A TRUE BILL:

  
FOREPERSON

  
ROBERT J. CLEARY  
United States Attorney

CRIM. NUMBER: 00-

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**United States District Court  
District of New Jersey**

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**UNITED STATES OF AMERICA  
vs.**

**ERVIN E. LEPKO**

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**INDICTMENT  
FOR**

**Title 18 U.S.C. §§ 1347 and 2**

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A True Bill,

  
**Fureperson**

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**ROBERT J. CLEARY**

***U.S. ATTORNEY NEWARK, NEW JERSEY***

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**BRUCE A. LEVY, AUSA - (973) 645-2873  
UNITED STATES ATTORNEY'S OFFICE  
970 BROAD STREET, SUITE 700  
NEWARK, NEW JERSEY**

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**EXHIBIT B**



United States Attorney  
District of New Jersey

ROBERT J. CLEARY  
United States Attorney

BRUCE A. LEVY  
Assistant U.S. Attorney

Peter W. Rodino Federal Building  
U.S. Attorney's Office  
970 Broad Street  
Suite 700  
Newark, New Jersey

Phone: (973) 645-2873  
Fax: (973) 645-2857

FILED

BAL:LEPK0227.PLG

February 27, 2001

APR 20 2001

AT 8:30  
WILLIAM T. WALSH • M  
CLERK

Gerald L. Shargel, Esq.  
Law Offices of Gerald L. Shargel  
570 Lexington Avenue, 16th Floor  
New York, New York

Re: Plea agreement with Ervin E. Lepko

Dear Mr. Shargel:

CE. 00-791 (HAA)

This letter sets forth the full and complete agreement between your client, Ervin E. Lepko, and the United States Attorney for the District of New Jersey ("this Office"). This offer will remain open until Monday, March 12, 2001, and if an executed agreement is not received in this Office on or before that time, this offer will expire.

CHARGE

Conditioned on the understandings specified below, this Office will accept a guilty plea from Dr. Lepko to Count One of the Indictment, Crim. No. 00-791 (HAA), which charges him with health care fraud by submitting false claims for medical services to Medicare and private insurance companies in violation of 18 U.S.C. § 1347. If Dr. Lepko enters a guilty plea and is sentenced on this charge, then this Office will not initiate any further charges against him arising from or relating to his involvement in the submission of claims for services from September 1996 through the date of this agreement. The scope of the protection offered in the previous sentence is further limited to the criminal activity that Dr. Lepko has revealed to this Office as of the date of this agreement.

SENTENCING

The violation of 18 U.S.C. § 1347 to which Dr. Lepko agrees to plead guilty carries a statutory maximum prison sentence of ten years. Pursuant to 18 U.S.C. § 3571, the sentencing judge may impose a fine of up to \$250,000 or twice the amount of any pecuniary gain that any persons derived from the offense or twice the gross amount of any pecuniary loss sustained by any of the victims of the offense. The Sentencing Reform Act and the Sentencing Guidelines also may

Certified as a true copy on

This Date: 3-12-01

By: M. D. H. T. O. N.

( ) Clerk

( ) Deputy

**impose a minimum term of imprisonment and/or fine, and the Sentencing Guidelines may authorize departure from the minimum and maximum penalties under certain circumstances. All fines in excess of \$2,500 imposed by the sentencing judge are subject to the payment of interest.**

**Further, in addition to imposing any other penalty on Dr. Lepko, the sentencing judge: (1) will order Dr. Lepko to pay an assessment of \$100, pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) shall order Dr. Lepko to pay restitution pursuant to 18 U.S.C. §§ 3663, 3663A and 3664; (3) may order Dr. Lepko, pursuant to 18 U.S.C. § 3555, to give notice to any victim of his offense; and (4) pursuant to 18 U.S.C. § 3583 and § 5D1.2 of the Sentencing Guidelines, may require Dr. Lepko to serve a term of supervised release of at least two but not more than three years, which will begin at the expiration of any term of imprisonment imposed. Should Dr. Lepko be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Dr. Lepko may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed and in addition to the statutory maximum term of imprisonment set forth above.**

**The sentence to be imposed upon Dr. Lepko is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, Title 18, United States Code, Sections 3551-3742, and Title 28, United States Code, Sections 991-98, and the United States Sentencing Guidelines. This Office cannot and does not make any representation or promise as to what guideline range will be found applicable to Dr. Lepko, or as to what sentence Dr. Lepko ultimately will receive. This Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Dr. Lepko by the sentencing judge. In addition, this Office will inform the sentencing judge and the U.S. Probation Office of: (1) this agreement; (2) the nature and extent of Dr. Lepko's activities and relevant conduct with respect to this case; and (3) all other information relevant to sentencing, favorable or otherwise.**

**This Office specifically reserves the right to take any position in post-sentencing motions or proceedings and to appeal, or to oppose any appeal of, Dr. Lepko's sentence.**

### **STIPULATIONS**

**This Office and Dr. Lepko agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate, each reserves the right to argue the effect of any fact upon sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Dr. Lepko from any other portion of this plea agreement, including any other stipulation.**

## **OTHER PROVISIONS**

**This agreement does not prohibit the United States, any agency thereof (including the IRS), or any third party from initiating or prosecuting any civil proceeding against Dr. Lepko. Further, Dr. Lepko agrees to allow the contents of his criminal file to be given to civil attorneys and support staff of the Internal Revenue Service to enable them to investigate any and all civil penalties that may be due and owing by Dr. Lepko. Dr. Lepko also waives any rights he may have pursuant to Title 26, United States Code, Section 7213, and any other right of privacy with respect to his 1995 and 1996 personal returns and return information.**

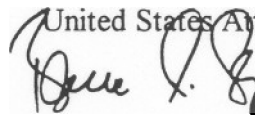
**This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested by Dr. Lepko to do so.**

**This agreement constitutes the full and complete agreement between Dr. Lepko and this Office and supersedes any previous agreement. No additional promises, agreements, or conditions have been entered into other than those set forth in this letter, and none will be entered into unless in writing and signed by the parties.**

Very truly yours,

ROBERT J. CLEARY

United States Attorney



By: BRUCE A. LEVY  
Assistant U.S. Attorney

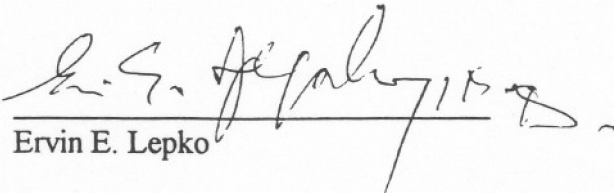
APPROVED:



Richard J. Schechter  
Deputy Chief, Fraud and Public  
Protection Division




I have received this letter from my attorney, Gerald L. Shargel, Esq. I have read it and I understand it fully. I hereby acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the District of New Jersey. I state that there have been no additional promises or representations made to me by any officials or employees of the United States Government or by my attorney in connection with this matter.



Ervin E. Lepko

Witnessed by:



Gerald L. Shargel, Esq.  
Counsel for Dr. Lepko

Date:

## PLEA AGREEMENT WITH ERVIN E. LEPKO

### Schedule A

**This Office and Dr. Lepko agree to stipulate at sentencing to the statements set forth below, subject to the conditions in the attached plea agreement. The references below are to the Sentencing Guidelines in effect following the amendments of November 1994.**

1. *The Sentencing Guideline applicable to the offense committed by Dr. Lepko is § 2F1.1 for a base offense level of 6.*

2. *The "loss" under the Guidelines is more than \$2,000 but less than \$5,000 and thus, 1 additional level will be added to the base offense level. U.S.S.G. § 2F1.1(b)(1)(J).*

3. *The offense committed by Dr. Lepko involved more than minimal planning and thus, 2 additional levels will be added to the base offense level. U.S.S.G. § 2F1.1(b)(2).*

4. *The offense committed by Dr. Lepko involved an abuse of a position of trust and thus, 3 additional levels will be added to the base offense level. U.S.S.G. § 3B1.3.*

5. *Pursuant to 18 U.S.C. § 3663(a)(B)(3) Dr. Lepko agrees to pay \$2,760 in restitution on or before the date of sentencing.*

6. *A downward adjustment of two levels is appropriate if Dr. Lepko clearly demonstrates recognition and affirmative acceptance of personal responsibility for the offense charged. U.S.S.G. § 3E1.1(a). If the total offense level is found to be 16 or greater and Dr. Lepko returns this agreement fully executed by March 12, 2001, Dr. Lepko may qualify for a further one-level reduction in his offense level under U.S.S.G. § 3E1.1(b)(2) because he will have assisted authorities in the prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty.*

rule11.frm

APR 20 2001

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEYAT 8:30  
WILLIAM T. WALSH  
CLERK

UNITED STATES OF AMERICA

Mag./Crim. No. 00-791(HAA)APPLICATION FOR PERMISSION  
TO ENTER PLEA OF GUILTY

(Defendant with Counsel)

ERUIN LEPKO, hereby certifies as follows:  
(Defendant's Name)

1. My full name is ERUIN LEPKO and I request that all proceedings against me be held in that name.
2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every stage in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.
3. I have a lawyer who is representing me in this proceeding. My lawyer's name is GERALD SHARBEL. I am satisfied that I have had enough time to discuss this matter with my lawyer.
4. My date of birth is 2/11/28. I [am] ~~[am not]~~ married and I have 0 children,
5. English ~~[is]~~ [is not] my native language. My formal education stopped after [grade] H.D.. I am presently ~~[unemployed]~~ ~~[employed]~~ as a Retired - Doctor [occupation]
6. I have taken ~~[not]~~ [the following] drugs or medication within the past twenty-four hours: LASIX . ATENOLOL
7. I ~~[have]~~ [have never] been a patient in a mental hospital or institution. I ~~[do]~~ [do not] believe that at the present time I am mentally ill or mentally incompetent in any respect.

Certified as a true copy on

This Date: 9-12-01By M. Drayton

( ) Clerk

( 4 ) Deputy

8. I received a copy of the Indictment before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that I:

INFLATED ANESTHESIA TIME

[add separate sheets if necessary]

WAIVER OF INDICTMENT (IF APPLICABLE)

9. My lawyer has explained to me that I have a constitutional right to be charged by an indictment of a grand jury but that I can waive that right and consent to being charged through a criminal Information filed by the United States Attorney.
10. I understand that unless I waive indictment I may not be charged with a felony unless a grand jury finds by return of an indictment that there is probable cause to believe that a crime has been committed and that I committed it.
11. I also understand that if I do not waive indictment, the government may present the case to the grand jury and request the grand jury to indict me.
12. I understand that a grand jury is composed of at Least 16 and, not more than 23 persons, that at least 12 grand jurors must find that there is probable cause to believe that I committed the crime. I also understand that the grand jury may or may not indict me.
13. I further understand that by waiving indictment by the grand jury, the case will proceed against me on the United States Attorney's Information as though I had been indicted.
14. My attorney has discussed the nature of the charges(s) against me and waiving my right to indictment thereon by grand jury, I fully understand those rights, and I wish to waive indictment by grand jury,
15. My decision to waive indictment by grand jury is made knowingly and voluntarily, and no threats or promises have been made to induce me to waive indictment,

THE GUILTY PLEA

16. I have told my lawyer all the facts and circumstances known to me about the charge(s) set forth in the Complaint/Indictment/Information.
17. I am satisfied that my lawyer understands the information which I have provided, and that my lawyer has counselled and advised me on the nature of each charge and on all possible defenses that I might have in this case.
18. In addition, my lawyer has explained to me, and I understand, that if I entered a plea of NOT GUILTY or persisted in my plea of NOT GUILTY, under the Constitution and laws of the United States I would be entitled to a speedy and public trial by a jury of twelve persons on the charge(s) contained in this Complaint/Indictment/Information.
19. My lawyer has explained to me, and I understand, that at such a trial the jury would be told by the judge that I am presumed to be innocent, and that the Government would be required to prove me guilty of the charge(s) against me beyond a reasonable doubt. I understand that I would not have to prove that I am innocent, and that I could not be convicted unless all twelve jurors voted unanimously for conviction.
20. My lawyer has explained to me, and I understand, that if I went to trial on these charge(s), the Government would have to produce in open-court the witnesses against me, and that my lawyer could confront and cross-examine them and object to evidence offered by the Government.
21. My lawyer has further explained to me, and I understand, that I have the right to produce witnesses and could offer evidence in my defense at a trial on these charge(s), and that I would have the right, if I so chose, to testify on my own behalf at that trial; but if I chose not to testify, the jury could draw no suggestion or inference of guilt from that fact.
22. My lawyer has explained to me, and I understand, that if I plead GUILTY to any charge(s) in this Complaint/Indictment/Information and the judge accepts my plea, I WAIVE MY RIGHT TO TRIAL AND THE OTHER RIGHTS SET FORTH IN PARAGRAPHS 18, 19, 20 and 21 ABOVE. I am aware and understand that if my GUILTY plea is accepted, there will be no trial and a judgment of GUILTY will be entered after which, the judge, upon consideration of my presentence report, will impose punishment upon me. I understand that if I plead GUILTY, the judge may impose the same punishment as if I had pleaded "not guilty". went to trial and was convicted by a jury.

23. My lawyer has also explained to me, and I understand, that if I plead GUILTY, I WAIVE MY RIGHT NOT TO INCRIMINATE MYSELF. I understand that the judge will ask me what I did and I will have to acknowledge my guilt as charged by setting forth my actions so that the judge is satisfied that I am, indeed, guilty. I understand that any statements I make at the time I plead GUILTY, if untrue and made under oath, can be the basis of a perjury prosecution against me.
24. My lawyer has informed me, and I understand, that the maximum punishment which the law provides for the offense(s) charged in this Complaint/Indictment/Information is:

A MAXIMUM OF 10 years imprisonment and a fine of \$ 250,000 for the offense(s) charged in Count(s) ONE. My lawyer has further explained, and I understand, that there is [no] ~~is~~ mandatory minimum punishment of \_\_\_\_\_ years imprisonment and [no] [a] mandatory minimum fine of \$ \_\_\_\_\_ for the offense(s) charged in Count(s) ONE.

I understand that if I plead GUILTY to Count(s) of the Complaint/Indictment/Information, I face a maximum sentence on those counts of \_\_\_\_\_ years imprisonment, plus an aggregate fine of \$ \_\_\_\_\_. My lawyer has additionally explained, and I understand that in addition to or in lieu of the penalties already discussed, I may be ordered to make restitution to any victim of the offense and that the Court may require me to make a restitution in services instead of money or to make restitution to a designated third person or organization instead of the victim. I understand that in determining whether to order restitution and the amount of restitution the Court will consider the amount of the loss sustained by any victim as a result of the offense, my financial resources, the financial needs and earning ability of my dependents, and any other factors as the Court deems appropriate.

I understand that I will be assessed \$100 for each felony upon which I am sentenced and \$25 for each misdemeanor, if any.

25. I hereby declare that no officer or agent of any branch of government, {Federal, State or local}, nor my lawyer, nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead GUILTY. My lawyer has explained, and I understand, that only the judge may decide what punishment I shall receive, and that if any person has told me otherwise, that person is not telling me the truth.

**IF A SENTENCING GUIDELINES CASE:** Please answer 26. through 34. If not, go directly to 35.

26. I understand that I will be sentenced according to the Sentencing Guidelines pursuant to the Sentencing Reform Act of 1984, since my offense(s) occurred on or after November 1, 1987.
27. I have discussed with my attorney how the Sentencing Guidelines might apply to my case.
28. I understand that the Court will not be able to determine the sentence for my case until after the Presentence Report has been completed and both I and the Government have had an opportunity to read the report and challenge any facts reported by the probation officer.
29. I further understand that after it has been determined which guideline range applies to my case, the judge has the authority to impose a sentence more severe (up to the statutory maximum) or less severe than the sentence provided by the guidelines.
30. I understand that the Court may be bound to impose a fine in accordance with both statutory requirements and the Sentencing Guidelines.
31. I understand that my plea agreement provides/does not provide that under certain circumstances I have waived my right to appeal or collaterally attack the sentence imposed in this case.
32. I understand that parole has been abolished and if I am sentenced to prison I will not be released on parole.
33. I further understand that the Court may impose a term of supervised release to follow any term of imprisonment and that any violation of that term of supervised release may result in an additional term of imprisonment. I understand that I am subject to a term of supervised release of \_\_\_\_\_ years, or not less than \_\_\_\_\_ year(s) but not more than \_\_\_\_\_ years.
34. I understand that I will have no right to withdraw my plea on the grounds that anyone's prediction as to the guideline range or expectation of sentence proves inaccurate.

PLEA AGREEMENT

35. I hereby declare that I have not been forced, coerced or threatened in any manner by any person to plead GUILTY to these charge(s). Nor have I been told that if I refuse to plead GUILTY, other persons will be prosecuted.

36. There has ~~has not~~ been a plea agreement entered into between me and the United States Attorney, by Assistant United States Attorney BRUCE LEWY (name)

[ ] The plea agreement does not exist in written form.

[X] The plea agreement does exist in written form. I have read it or have had it read to me in (LANGUAGE). My lawyer has explained it to me and I understand it.

37. The substance of the plea agreement is:

PLEA TO COUNT ONE AS SET FORTH

38. My lawyer has explained to me, and I understand, that the terms of the plea agreement might be unacceptable to the judge. If the judge does not accept the terms of the agreement, I understand that I may withdraw my GUILTY plea or go ahead and plead GUILTY anyway. If, after the judge informs me that the plea agreement is unacceptable, I continue in my desire to plead GUILTY, I understand that the disposition of my case may be less favorable than that proposed in the plea agreement.

39. I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP MY LAWYER HAS GIVEN ME.

40. I know the judge will not permit anyone to plead GUILTY who claims to be innocent, and with that in mind and because I am GUILTY, I respectfully request that the Court accept my plea of GUILTY and to have the Clerk enter my plea of GUILTY as follows:

To Count(s) ONE of this Complaint/Indictment/ Information.

41. I offer my plea of GUILTY freely and voluntarily and of my own accord with full understanding of all matters set forth in the Complaint/Information/Indictment, in this application, and in the certification of my lawyer which is attached to this application.



## CERTIFICATION OF COUNSEL


GERALD SHARGEL

hereby certifies that:

1. I am an attorney at law of the State of New York and have been [retained by] [~~assigned as~~ represent] the defendant ENIN (aplo) in Magistrate/Criminal No. 001-71
2. I have read and fully explained to the defendant the allegations contained in the Complaint/Indictment/Information.
3. To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing Application are in all respects accurate and true.
4. (IF APPLICABLE) In my opinion the defendant's waiver of indictment by grand jury is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
5. In my opinion the defendant's waiver of reading the Indictment/Information/Complaint in open court as provided in Rule 10 is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
6. I have explained the maximum and any mandatory minimum penalty for each count to the defendant. I have explained to him that he may be ordered to make restitution under the Victim and Witness Protection Act.
7. (IF A GUIDELINE CASE) I have explained to the defendant that sentencing will be governed by the Sentencing Guidelines as established by the Sentencing Commission. I have further explained how the Guidelines might apply to this offense and to the defendant.
8. The plea of GUILTY offered by the defendant in Paragraph 40 accords with my understanding of the facts related to me and is consistent with my advice to the defendant.
9. In my opinion the plea of GUILTY as offered by the defendant in Paragraph 40 of this Application is voluntarily made with understanding of the consequences of the plea. I recommend that the Court accept the plea of GUILTY.

Signed by me in open court in the presence of the defendant above named, and after full disclosure of the contents of this certification to the defendant, this 20<sup>th</sup> day of April

192001

  
Attorney for the Defendant